IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 4TH AUGUST 2006 / 13TH SRAVANA 1928

ST.Rev..No. 281 of 2003()

TA.702/2002 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
.....

(ASSESSEE/APPELLANT)

M/S.KEERTHI LIQUORS, EDAVILANQUE,
KODUNGALLUR.

BY ADV. SRI.K.B.MUHAMED KUTTY
SRI.K.M.FIROZ

RESPONDENTS: (REVENUE/RESPONDENT)

STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 04/08/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

S.T.Rev. NO. 281 OF 2003

Dated this the 4th day of August, 2006

JUDGMENT

CR

Ramachandran Nair,J.

The question raised in the Tax Revision is whether the petitioner, an arrack dealer, who paid sales tax at the compounded rate under Section 7(14) of the KGST Act, is entitled to exemption on turnover tax under Annexure D notification, namely SRO 1401 of 1992. The Tribunal following the decision of this Court in ALEYAMMA V. SALES TAX OFFICER, (1993) 1 K.L.T. 810 reversed the appellate authority's order in favour of the petitioner, and held that petitioner is liable to pay turnover tax on the sales turnover of arrack during the year 1992-93. Notification SRO 1401/92 which was made effective from 1.4.1992 after retaining turnover tax at all points on items like, petrol, foreign liquor, etc. provided that items not mentioned in sub-clauses (a) to (f) of the notification and falling under the First or Fifth schedule will be exempt from turnover tax, except the commodities that are

brought from outside the State on consignment transfer. This notification was challenged as discriminatory by various dealers who brought goods from outside the State and sold in the State, and this Court in ASST. COMMISSIONER (ASSESSMENT), SALES TAX V. ASSOCIATED CEMENT COMPANY LTD. (1998) 108 STC 219 held that notification was discriminatory and by way of declaratory relief this Court held that local dealers are entitled to exemption from turnover tax on first sales of goods not covered by sub-clauses (a) to (f) of SRO 1401/92. This judgment appears to be accepted by the Government and is applicable to the present case.

2. The next question is whether petitioner falls under sub-clause (g) of the notification entitling for exemption. The Tribunal held that the petitioner does not fall under sub-clause (g) probably under the impression that arrack is an item falling under sub-clause (b) of notification which provides for turnover tax at all points on Indian Made Foreign liquor, and foreign liquor. The items on which turnover tax at all points are retained under sub-clause (b) under SRO 1401/92 are foreign liquor, and Indian made foreign liquor. Those are entries

53 and 54 of the First Schedule to the KGST Act which specifically excludes arrack. Since petitioner was a dealer in arrack for the year 1992-93, petitioner is covered by sub-clause (g) and by virtue of the above decision petitioner is not liable to pay any turnover tax on sales turnover of arrack. Therefore we allow the ST Rev. by vacating the order of the Tribunal and restoring the order of the first appellate authority, for the reasons stated above.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge